IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.182 OF 2006
IN
CRIMINAL WRIT PETITION NO.1111 OF 2005

Ganesh Babusingh Rathod & ors. Applicants
vs.
The State of Maharashtra & ors. Respondents

Mr.J.M.Puranik for the applicants-petitioners.

Mr.D.S.Mhaispurkar, APP for State.

CORAM : SMT.RANJANA DESAI &
ANOOP V. MOHTA,JJ.

DATED : 27th February, 2007

P.C.

After perusing the affidavits filed by Dr.P.S.Pasricha, Director General of Police as well as Smt.Archana Tyagi, Superintendent of Police, Thane, this Court on 19.10.2006 directed the State to serve the notice of "C" summary along with the report on the applicants by deputing an officer not below the rank of PSI and acknowledge the receipt. Accordingly notice of "C" summary has been served on the applicants. The applicants have acknowledged the receipt. There is no dispute that notice has been served on the applicants. In view of this, in our opinion, the appropriate course for the applicants will be, if they so desire to appear before the learned Magistrate and raise objection to the

"C" summary application filed by the applicants. If any objection is filed, we direct the learned Magistrate seized of the matter to consider it in accordance with law. The learned Magistrate shall deal with it independently and dismissal of this application may not be treated as our expression of opinion on the merits of the case one way or the other.

2. The learned counsel for the applicants states that prayer (b) of the application be granted. Prayer (b) reads thus:

> (b) Be pleased to observe and hold that the Police authorities have deliberately and willfully disobeyed the specific directions issued by this Hon'ble Court in terms of the contents of para 7(a) to 7 (h) hereinabove and be pleased to initiate suo-motu Contempt action against the defaulting Police authorities, as per the provisions of Contempt of Contempt of Courts Act, 1971."

3. The learned counsel for the applicants pointed out that while disposing of Writ Petition No.1111/2005 this Court had directed the concerned police station to investigate the complaint of the applicants if the applicants approach it. The learned counsel submitted that the police have violated this direction. Instead of the concerned police station, the SDPO, Shahapur has carried out the investigation and therefore the order

passed by this Court is flouted. We notice that on 19.10.2006 this Criminal Application was placed for hearing before the Division Bench. The learned counsel for the applicants did not remain present. It is apparent therefore that the applicants were not interested in pressing this relief. On 19.10.2006 therefore this Court has after considering the order passed by this Court dismissing the writ petition on 23.2.2006 directed that notice of "C" summary be served on the applicants. If the applicants were really aggrieved by the investigation which was conducted by SDPO Shahapur that grievance ought to have been voiced on 19.10.2006. It must be presumed that the bench headed by Justice Patel considered all these facts and passed order on 19.10.2006. It is not open for the applicants to make this grievance now.

4. Besides, we find from the affidavit of Smt.Archana Tyagi, Superintendent of Police, Thane that decision to conduct enquiry by the higher authority who is independent from the concerned police station was taken because the complainant had no faith in Kalyan Taluka Police Station. We may quote the relevant paragraphs of the said affidavit. It reads thus:

> "6. The Kalyan Taluka Police Station comes under Murbad Sub-Division & Shri Gaikwad, SDPO Murbad had already conducted the enquiry into the

application dtd.17.1.2005 and submitted his report to the Hon'ble High Court. Later on Hon'ble High Court did not agree with the report. The petitioner in his application dtd.17.1.2005 has requested for investigation by; a higher authority who is independent from the Kalyan Taluka Police Station. Also 2 Policemen involved in this case were attached to the Kalyan Taluka Police Station and it would not have been fair to entrust the investigation of this case to Kalyan Taluka P.Stn. Moreover, the inference of the application dtd.17.1.005 was drawn that the applicant did not believe in the Kalyan Taluka PS and Dy.SP Shri.Gaikwad. From the FIR also it is clear that the complainant has no faith in Kalyan Taluqa Police Station and has requested for investigation by higher authority who is independent from the Police Station.

7. It was felt necessary that the case should be investigated by an officer of the Dy.S.P. level who is distinct from Kalyan Taluqa Police Station and Murbad Sub-Division. Hence an order was issued to Kalyan Taluqa PS that the investigation be handed over to Shri R.U.Jadhav, SDPO Shahapur vide this office wirless Message dtd.7.3.2006. It was decided in order to observe the principle of natural justice and to have fair, unbiased and impartial investigation and also taking into consideration about the nature and seriousness of allegations against the Policemen involved in this case and also with view to satisfy the demand of the applicant as mentioned in his application dated 17.01.2005 annexed to the High Court Criminal writ no.1111/2005."

5. In our opinion with the observation made in first paragraph and directions issued therein the present

Criminal Application will have to be dismissed and is dismissed accordingly.

[SMT.RANJANA DESAI,J.]

[ANOOP V. MOHTA,J.]